

Comments in Response to Localism Notice of Proposed Rulemaking

MB Docket No. 04-233

In response to the Report on Broadcast Localism and Notice of Proposed Rulemaking adopted December 18, 2007 and released January 24, 2008 in MB Docket No. 04.233 I submit the following comments as a consumer of media services.

In summary, I am opposed to the adoption of these regulations for the following reasons:

1. The proposed regulations do not regulate the real cause of the perceived problem.
2. There are violations of constitutional rights to freedom of speech that are intimately linked to the principles of personal ownership.

The following discussion is my explanation of these affirmations.

1. The proposed regulations do not regulate the real cause of the perceived problem.

The perceived problem, in my understanding from the proposed rulings and the discussions that I have read to date, is the failure of radio and TV broadcasting to satisfy local consumers' desires for local news, emergency weather information, and locally generated entertainment, items that are disappearing from their locally accessible radio and TV broadcasts.

The declaration published by the FCC on the Internet site <http://www.fcc.gov/localism/> states:

The purpose of Localism Proceedings is to gather information from consumers, industry, civic organizations, and others on broadcasters' service to their local communities. Along with competition and diversity, promoting localism is a key goal of the Commission's media ownership rules.

However, as this statement of purpose declares, the Localism issue is merely a sub-element in the larger question of "media ownership rules", which indeed is a far heavier issue, which is effectively being ignored in the discussions, with a few exceptions.¹ And it is exactly this major issue that is not being treated by the proposed regulations.

¹ For example: Willaim Triplett, "Bigger isn't better: Symposium speakers warn of large media cos."

<http://variety.com/article/VR1117929909.html?categoryid=1064&cs=1> does discuss the ownership issue.

The comments on the blog page of StopBigMedia.com

<http://www.stopbigmedia.com/blog/> manifest a mix. "What Broadcasters Don't

In my perception of the national and international situation, the current trend toward an even smaller group of media ownership is the result of FCC licensing practices, which is the major factor that has permitted the media conglomerates to overwhelmingly dominate the public media both “vertically and horizontally”.

The Localism Proceedings are merely parts of an effort to regulate the conglomerates to be a little more responsive to consumers in certain geographically defined areas, and doing so in such a way that smaller radio and TV stations would be forced into large expenditures to fulfill these new requirements and thus jeopardize their ability to serve their audiences. The larger conglomerates, of course, would benefit from the opportunity to invade the space left open by the oppressed smaller operations.

So while the American public is summoned to discuss Localism, the licensing practices continue to permit the big to get bigger.

The mere fact of being big does not preclude the possibility of satisfying local audiences’ consumer characteristics. There are programming and technical capabilities at the disposal of the producers to address these “Localism” issues, even by remote control. But, since the freedom of speech guarantees to the big media companies their constitutional rights to proclaim their opinions to the public, there is no constitutionally valid mechanism to force these broadcasters to express any other opinion than their own. And that is the way it should be. What is not democratic in this situation is that lack of any opportunity for other voices to express their opinions, unless, of course, the big guys were forced to open opportunities for others to use “their airtime”, but this is a serious violation of their (and our) constitutional rights.

The comments which I have read indicate clearly that the licensing practices of the FCC has permitted the current concentration of ownership to continue on its way to single monopolized control, and the current discussion of the proposed regulations in the name of Localism is avoiding this weightier matter, and is infringing on the rights of the owners to their free speech.²

2. There are several issues of the constitutional right to freedom of speech

The regulations for reporting the amount of local programming content are the first and obvious violations of the broadcasters’ freedom of speech. The broadcaster has the right to say anything truthful and helpful to the community

Want you to Know”, posted April 11, 2008 by jstearns, ignores the ownership issue and supports more control of the existing conglomerates. “Kerry to FCC: We Werb’t Bluffing”, posted April 1, 2008 by JohnKerry, does address the ownership issue.

² The words of commissioner **MICHAEL J. COPPS** annexed to the NPR MB Docket No. 04-233 call attention to the greater issue, and even though he was among the minority he deserves to be heard.

that he serves, no matter how limited or global his audience may be. He even has “the right” to ignore local concerns, even to his own detriment through loss of audience and any other benefits derived from public acceptance.

The requirement to form local advisory boards is yet another such regulation. The community is not the owner of the broadcasting unit, nor does it control the content, since the broadcaster is the owner and he has the right to determine what he broadcasts. Of course, the moral obligations of life not explicitly detailed in the Constitution direct the broadcaster to be truthful, kind and sensitive in the manner that he presents his content to the public.

The requirement to maintain personal human presence at the physical broadcast unit is both technically irrelevant and a violation of the owner’s right to maintain his own property as he sees fit. The perceived problem, emergency weather situations, has its cause in the concentration of ownership and its lack of preparedness of these owners to serve the community in emergency situations, whether by locally present humans, or by remote control of the broadcasting unit. Though it seems very cruel to me for a broadcaster to ignore these emergency situations, he has his constitutional right to use airtime as he sees fit.

The reporting burden is yet another infringement of the broadcasters’ right of free speech. Public regulation of programming content is outside the jurisdiction of the public authority.³ Therefore, the reporting form, paper or digital, is irrelevant and must be discarded.

The observation that certain audiences are “underserved” in their local geographic area is, once again, an indication that the FCC licensing procedures has greatly contributed to the development of this situation and is now trying to remedy it by controlling the content of the programming aired by the privileged few, in violation of their right to free speech.

I include the network affiliation here, just to say it was not overlooked, and even though I do not have time to gather more information and give a more objective comment. On the one hand, the programming issue is an internal issue and a matter of honoring the affiliation agreements. On the other, it seems to me that network affiliation is a move in response to the control by the “big boys” by offering a competition more on the level of the big direct ownership conglomerates. If this be the case, it is yet another evidence that the FCC licensing policies has granted favors to a few, and thus generated a perceived need to join or be crushed individually.

³ This is my direct challenge to what seems to me to be a basic unexpressed and unchallenged assumption: that the government through the agency of the FCC exercises legitimate and unlimited control over the content of radio and TV broadcasting. The American citizen must retain his rights to free speech and challenge this behavior insisting that the governments’ control should be limited to encouraging free speech and punishing those who speak falsely, avoiding the technical interferences due to signal propagation characteristics, and promoting a healthy democratic use of the media.

The payola/sponsorship identification is a problem that may never be solved adequately. The rich, or those who acquire the funds by other means, using all means possible for self and commercial promotion can appear at any level of the communications strata. It is an effort to dominate an otherwise free democratic communications system, not by force or by law, but by the “investment” of funds to gain domination of airtime for the promotion of their own opinion or product to produce even more personal wealth or power. This behavior is certainly inappropriate, but much more difficult to regulate without violating the broadcasters’ rights to ownership and granting of airtime to whomever he wishes, or violating the right of anyone with a message for the public to pay a just fee for the use of broadcasters’ equipment to publish his message. I am not convinced that disclosure of sponsorship is adequate, but may be a help in identifying those who are abusing democracy for personal or commercial supremacy.

Appendices

Appendix A

My observations from a foreign country

I have been residing in Brazil since January 30, 1985. From this context I have been amazed time and again at the dominance of an undefined elite group over all forms of media. The news that is reported in the *Veja* (a major national weekly magazine), is the same that appeared in the *U.S. News & Review*. The percentage of USA music broadcast in the stores and on the radio, the CD’s with USA artists, the T-shirts with USA words ... (the list goes on) continue to disturb me. Even the USA presidential election campaigns currently in progress is in the daily TV news reports. Obviously, the favored few are dominating not only the national media, but they also have gained control at the international level.

This vertical and horizontal dominance was first brought to my attention during my time in study during 1973-1976 by my housemate and further enhanced by reading other material available to me at that time. The evidence clearly indicates that the dominance is not just in the radio and TV, but spreads out through newspapers, magazines, movies, and even classroom textbooks. At that time I was only aware of the national implications.

But when the new vice-ambassador visited our offices in Manaus, I was alerted to the detrimental effects of this international dominance of the newsgathering and filtering system. Over 3000 “Christians” had recently been persecuted and killed in Africa, and though he had tried to get out the news, nothing was ever told to the American public. In order for the news of this magnitude to reach the USA public, there must be a greater diversity of ownership in all forms of media, since the dominating system was unwilling to alert the USA that such things do happen in Islamic states.⁴

⁴ Names and dates are unrecorded and either forgotten or excluded to protect the innocent.

It is now my strong suspicion that the licensing practices of the FCC has been a major contributing factor in this international dominance in the media ever since its inception as a department of the government of the USA. The procedures practiced in the granting of licenses has favored a few and created a situation contrary to healthy democratic access to Radio and TV.

Appendix B

Internet and Cable

“Broadcasting” on the Internet and cable is yet another area where the dominance of the “big companies” is challenging the just democratic use of these technologies. Once again, it is not the “Localism” issues that are most important, but the granting of the licenses in a fair and just manner, opening the way for all to express freely their messages to the public.

The “neutrality” issue on the Internet may be a misnomer. Anyway, the attempt to control traffic on the Internet by “content” instead of by volume of use is a direct challenge to freedom of speech.

The current dispute over “multicast must carry” on cable TV, is a parallel to the “localism” issues, with the same indications that the licensing practices are hindering the healthy democratic access to the media. The privileged few are fighting to protect their dominance.

Appendix C

Gratitude

I am grateful that enough democratic process still exists that I, as a consumer, have this opportunity to comment on these proposed regulations. May God grant the FCC the wisdom and courage to make wise and just decisions in all these matters.

Sincerely yours,

Richard Eger
April 16, 2008